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HUFFMAN LAW GROUP, P.C. 1832 N. CASCADE AVE. COLORADO SPRINGS, CO 80907-7449			JABR, FADEY S	
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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/994,465	Applicant(s) CLOSE ET AL.	
	Examiner Fadey S. Jabr	Art Unit 3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>5/31/02, 9/2/03, 9/30/03, 2/17/04, 7/12/04, 9/14/04, 10/26/04, 11/5/04, 2/2/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings filed on 11/26/2001 are acceptable subject to correction of the informalities indicated on the attached "Notice of Draftsperson's Patent Drawing Review," PTO-948. In order to avoid abandonment of this application, correction is required in reply to the Office action.

The correction will not be held in abeyance.

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement sheets which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments section, or remarks, section of the amendment paper. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). A replacement sheet must include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheet(s) must be clearly labeled as "Annotated Sheet" and must be presented in the amendment or remarks section that explains the change(s) to the drawings.

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Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings MUST be filed within the THREE MONTH shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

1. The disclosure is objected to because of the following informalities: in paragraph 8, page 6, of the disclosure, the word "that" is assume to have been "than".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims **9, 10, 19, 27 and 28** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per **Claim 9**, the recitation of the word "normally" is vague and indefinite. It is unclear to the Office whether the products are substitute or complementary products.

Appropriate correction is required in the indicated claims and any subsequent recitations of the word.

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As per **Claims 10 and 27**, the recitation of the word “may” is vague and indefinite. It is unclear to the Office if the product does or does not span more than one of said plurality of demand groups. Appropriate correction is required in the indicated claims and any subsequent recitations of the word.

As per **Claim 19**, the recitation of the word “volume” is vague and indefinite. It is unclear to the Office what type of volume the applicant is attempting to claim.

As per **Claim 28**, Claim 28 recites the limitation "employing" in line 4 of page 81. There is insufficient antecedent basis for this limitation in the claim.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims **1-15, 18-28 and 30-32** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **1, 4-10 and 12-29** of U.S. Patent No. 6,553,352 B2 in view of Kalyan et al., U.S. Patent No. 6,826,538 B1.

Although the conflicting claims are not identical, they are not patentably distinct from each other. Claim 1 of U.S. Patent No. 6,553,352 B2 recites:

an interface enabling a user to determine optimum prices of products for sale, comprising:

a scenario/results processor, configured to enable a user to prescribe an optimization scenario,

and configured to present the optimum prices to said user, wherein the optimum prices

are determined by execution of said optimization scenario, and wherein said optimum

prices are determined based upon estimated product demand and calculated activity based

costs, said scenario/results processor comprising:

- an input/output processor, configured to acquire data corresponding to said optimization scenario from said user, and configured to distribute optimization results to said user, wherein said data is acquired from said user over the Internet via a packet-switched protocol; and
- a scenario controller, coupled to said input/output processor, configured to control acquisition of said data and distribution of said optimization results in accordance with a price optimization procedure.

Claim 1 of U.S. Patent No. 6,553,352 B2 differs since it further recited additional claim limitations including acquiring data from a user over the Internet via a packet-switched protocol. However, it would have obvious to a person of ordinary skill in the art to modify claim 1 of U.S. Patent No. 6,553,352 B2 by removing the limitations directed to acquiring data from a user via

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the Internet resulting in the claims of the present application since the claims of the present application and the claim recited in U.S. Patent No. 6,553,352 B2 actually perform a similar function. It is well established that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963). Also note *Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art.

Also, claim 1 of U.S. Patent No. 6,553,352 B2 differs since it fails to recite a method wherein said price optimization procedure is configured to relax constraints of lower priority conflicting rules to render said optimization scenario feasible. Kalyan et al. discloses removing or relaxing a constraint in order to make computation of optimization problem feasible (Col. 4, lines 36-47; Col. 19, lines 10-27; Col. 20, lines 1-8). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claim 1 of U.S. Patent No. 6,553,352 B2 and include relaxing constraints in order to make optimization scenario feasible as taught by Kalyan et al. because it greatly simplifies the optimization scenario.

Claim 20 of U.S. Patent No. 6,553,352 B2 recites:

a method for providing an interface to an apparatus for optimizing the prices of products for sale, comprising:

- utilizing a computer-based scenario/results processor within an optimization server to
 - present a sequence of data entry templates to a user, whereby the user specifies an optimization scenario, the optimization server optimizing the prices according to modeled market demand chain costs for the products;

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generating a plurality of optimization results templates and providing these templates to the user, wherein the optimum prices are presented.

Claim 20 of U.S. Patent No. 6,553,352 B2 differs since it fails to recite a method of selectively limiting the number of prices that are optimized. Kalyan et al. discloses restricting the number of prices that are optimized (Col. 3, lines 12-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claim 20 of U.S. Patent No. 6,553,352 B2 and include limiting the number of prices that are optimized as taught by Kalyan et al. because it would greatly simplify the optimization scenario.

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claims **1-32** are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims **1-31 and 50-62** of copending Application No. **09/999078 and 09/999079**. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims **1, 20 and 30** are rejected under 35 U.S.C. 102(e) as being anticipated by Kalyan et al., U.S. Patent No. 6,826,538 B1.

As per **Claim 1**, Kalyan et al. discloses a method wherein an interface enabling a user to determine optimum prices of products for sale, comprising:

a scenario/results processor, configured to enable a user to prescribe an optimization scenario, and configured to present the optimum prices to said user, wherein the optimum prices are determined by execution of said optimization scenario, and wherein said optimum prices are determined based upon estimated product demand and calculated activity based costs, said scenario/results processor comprising
(Col. 2, lines 46-67; Col. 3, lines 1-3; Col. 7, lines 53-63):

- an input/output processor, configured to acquire data corresponding to said optimization scenario from said user, and configured to distribute optimization results to said user (Col. 2, lines 56-59; Col. 3, lines 32-38; Col. 7, lines 53-63, also see Figure 3); and
- a scenario controller, coupled to said input/output processor, configured to control

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acquisition of said data and distribution of said optimization results in accordance with a price optimization procedure, wherein said price optimization procedure is configured to relax constraints of lower priority conflicting rules to render said optimization scenario feasible

(Col. 2, lines 56-59; Col. 4, lines 36-47; Col. 19, lines 10-27; Col. 20, lines 1-8).

As per **Claim 20**, Kalyan et al. discloses a method for providing an interface to an apparatus for optimizing the prices of products for sale, comprising:

utilizing a computer-based scenario/results processor within an optimization server to present a sequence of data entry templates to a user, whereby the user specifies an optimization scenario, the optimization server optimizing the prices according to modeled market demand chain costs for the products; said utilizing comprising

(Col. 2, lines 46-67; Col. 3, lines 1-3, 32-38; Col. 7, lines 53-63):

- selectively limiting the number of prices that are optimized (Col. 3, lines 12-13); and
- generating a plurality of optimization results templates and providing these templates to the user, wherein the optimum prices are presented

(Col. 2, lines 56-59; Col. 7, lines 60-63).

As per **Claim 30**, Kalyan et al. discloses a method wherein said utilizing comprises: providing a strategy template, for specifying a merchandising performance figure of merit, and for prescribing limits for changes in sales volume (Col. 3, lines 12; Col. 4, lines 14-17).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims **2-8, 16-19, 21-26, 31 and 32** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalyan et al., U.S. Patent No. 6,826,538 B1 in view of Ouimet et al., U.S. Patent No. 6,308,162 B1.

As per **Claims 2, 3, 22 and 23**, Kalyan discloses all of the limitations of claims 1 and 20. Kalyan fails to disclose a method wherein said data is acquired from said user over the Internet via a packet-switched protocol, or acquired and distributed through an electronic file. However, Ouimet et al. teaches a method wherein data can be acquired over the Internet or via computer readable medium (Col. 3, lines 43-49, 56-67; see also Figure 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include acquiring data from a user via the Internet or an electronic file as taught by Ouimet et al. because it greatly improves the convenience of the system by providing the user with convenience and a system that is user-friendly.

As per **Claim 4**, Kalyan discloses all of the limitations of claim 1. Kalyan fails to disclose a method wherein said input/output processor comprises:

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- a template controller, configured to provide first price optimization templates and second price optimization templates, wherein said price optimization templates are presented to said user to allow for prescription of said optimization scenario, and for distribution of said optimization results; and
- a command interpreter; configured to extract commands from said first price optimization templates executed by said user, and configured to populate said second price optimization templates according to result data provided for presentation to said user.

However, Ouimet et al. teaches presenting the user with menus that acquire data and distribute results to the user based on the acquired data (Col. 3, lines 27-67; Col. 4, lines 1-15, 43-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include menus that acquire and distribute data to and from the user as taught by Ouimet et al. because it greatly improves the efficiency and convenience of the system by providing the user with a system that is user-friendly.

As per **Claims 5-7 and 24-26**, Kalyan et al. discloses all of the limitations in claims 1 and 20. Kalyan et al. fails to disclose a method wherein said first and second price optimization templates are provided as hypertext markup language (HTML), extensible markup language (XML), and Java applets. However, Ouimet et al. teaches transmitting the menus via the Internet (Col. 3, lines 43-49). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include providing the

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menus using common computer languages as taught by Ouimet et al. because it greatly improves the efficiency of the system by providing the user with a system that is user-friendly.

As per **Claim 8**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. fails to disclose a method wherein said first price optimization template comprise: a plurality of new scenario templates, configured to enable said user to prescribe scenario parameters corresponding to said optimization scenario. However, Ouimet et al. teaches allowing a user to define scenario parameters (Col. 4, lines 42-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include a menu wherein a user is able to define scenario parameters as taught by Ouimet et al. because it greatly improves the convenience of the system by providing the user with convenience and a system that is user-friendly.

As per **Claim 16**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. fails to disclose a method wherein said first price optimization templates further comprise: a configured rules template, configured to enable said user to prescribe a priority corresponding to each of a plurality of rules, said plurality of rules providing constraints for said optimization scenario. However, Ouimet et al. teaches allowing the user to indicate constraints for optimization scenario (Col. 2, lines 19-22; Col. 4, lines 1-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include allowing user to specify constraints as taught by Ouimet et

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al. because that would allow the user to analyze the constraints associated with the product prices (Col. 4, lines 7-9).

As per **Claim 17**, Kalyan et al. further discloses a method wherein said first price optimization templates further comprise:

a subset re-optimization template, configured to enable said user to prescribe a maximum number of price changes to be determined by execution of said optimization scenario (Col. 3, lines 12-13, 60-67; Col. 4, lines 1-17).

As per **Claim 18**, Kalyan et al. further discloses a method wherein said second price optimization templates comprise:

a price optimization results template, for providing said user with said result data corresponding to said optimization scenario (Col. 2, lines 56-59).

As per **Claim 19 and 32**, Kalyan et al. further discloses a method wherein said result data comprises optimized values and percent values for merchandising factors, wherein said merchandising factors comprise one or more of the following: volume, revenue, product cost, gross margin and net profit (Col. 4, lines 14-17; Col. 6, lines 33-47).

As per **Claim 21**, Kalyan et al. discloses all of the limitations of claim 20. Kalyan et al. fails to disclose a method wherein said utilizing comprises:

- acquiring data corresponding to the optimization scenario from the user ; and

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- formatting the data into a format suitable for performing a price optimization according to the optimization scenario.

However, Ouimet et al. teaches acquiring optimization scenario data from a user and preparing the data prior to processing the data (Col. 3, lines 27-42). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include acquiring data from a user and formatting the data prior to processing as taught by Ouimet et al. because it greatly improves the efficiency of the system by providing the user with an efficient user-friendly system.

As per **Claim 31**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. discloses a method wherein options for specifying of said merchandising performance figure of merit comprise net profit and revenue (Col. 4, lines 16-17; Col. 11, lines 14-15). Kalyan et al. fails to disclose wherein merchandising performance figure of merit comprises sales volume. However, Ouimet et al. teaches merchandising performance figure of merit comprises sales volume (Col. 5, lines 47-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include sales volume as a merchandising performance figure of merit as taught by Ouimet et al. because a user would want to optimize prices in order to achieve a particular level of sales (Col. 5, lines 47-50).

Claims **9-15 and 27-29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalyan et al., U.S. Patent No. 6,826,538 B1 in view of Ouimet et al., U.S. Patent No. 6,308,162

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B1 as applied to claims 1 and 20 above, and further in view of Phillips et al., Pub. No.

US2002/0116348 A1.

As per **Claim 9 and 27**, Kalyan et al. discloses all of the limitations of claims 1 and 20.

Kalyan discloses a method wherein said utilizing comprises:

a time horizon template, for prescribing a time period for which the optimum prices are to be determined (Col. 7, lines 44-57).

Kalyan et al. fails to disclose:

- providing a products template, for specifying the products for sale for which the optimum prices are to be determined, wherein the products for sale may span more than one of the plurality of demand groups; and
- providing a category template, for specifying a product category for price optimization, wherein the product category comprises a plurality of demand groups, each of said plurality of demand groups configured to categorize a set of highly correlated products, wherein said highly.

However, Ouimet et al. teaches a menu interface for inputting data. Ouimet et al. also teaches providing a store manager with optimum prices for which to items that are to be sold (Col. 4, lines 57-64). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include inputting the items whose prices are to be optimized.

Phillips et al. teaches categorizing products into categories and then optimizing the prices for those products (Para. 5, 13, 34 and 35). Therefore, it would have been obvious to one of

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ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include grouping products into categories. Phillips et al. provides motivation for grouping products into categories because the optimization model becomes easier to manage due to fewer sets of data (Para. 34).

As per **Claim 10**, Kalyan et al. discloses all of the limitations in claim 1. Kalyan et al. fails to disclose a method wherein said plurality of new scenario templates further comprises: a products template, for specifying the products for sale, wherein the products for sale may span more than one of said plurality of demand groups. However, Ouimet et al. teaches a method wherein a user is provided the optimal prices to sell the products (Col. 4, lines 57-64). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include a menu wherein the user could specify which products and therefore which prices they would want to optimize because it greatly improves the convenience of the system by providing the user with convenience and a system that is user-friendly.

As per **Claim 11**, Kalyan et al. discloses all of the limitations in claim 1. Kalyan et al. fails to disclose a method wherein said plurality of new scenario templates further comprises: a locations template, for specifying a plurality of store groups for which the optimum prices are to be determined, wherein, when determining the optimum prices, the apparatus employs portions of said data that correspond to said plurality of store groups. However, Ouimet et al. teaches determining the optimum prices for one store (Col. 10, lines 34-44). Therefore, it would

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have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include specifying for which store locations to determine the optimum prices as taught by Ouimet et al. because a user would want to optimize the prices for more than one store in order to maximize profits throughout all store locations.

As per **Claims 12**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises:

a time horizon template, for specifying a time period for which the optimum prices are to be determined (Col. 7, lines 44-57).

As per **Claim 13**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises:

- an at-large rules template, for specifying rules to govern determination of the optimum prices, said rules comprising:
- maximum allowable price swing for each of the products for sale; and
- maximum allowable swing for average price of each demand group within said plurality of demand groups (Col. 3, lines 12-13, 60-67; Col. 14, lines 1-17).

As per **Claim 14**, Kalyan et al. further discloses a method wherein said plurality of new scenario templates further comprises:

a strategy template, for specifying a merchandising performance figure of merit, and for specifying limits for changes in sales volume (Col. 3, lines 12-13; Col. 4, lines 14-17).

As per **Claim 15**, Kalyan et al. discloses all of the limitations of claim 1. Kalyan et al. discloses a method wherein options for specification of said merchandising performance figure of merit comprise net profit and revenue (Col. 4, lines 16-17; Col. 11, lines 14-15). Kalyan et al. fails to disclose wherein merchandising performance figure of merit comprises sales volume. However, Ouimet et al. teaches merchandising performance figure of merit comprises sales volume (Col. 5, lines 47-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include sales volume as a merchandising performance figure of merit as taught by Ouimet et al. because a user would want to optimize prices in order to achieve a particular level of sales (Col. 5, lines 47-50).

As per **Claim 28**, Kalyan et al. discloses all of the limitations in claim 20. Kalyan et al. discloses a method wherein said utilizing further comprises:

- providing an at-large rules template, for specifying rules to govern determination of the optimum prices, wherein the rules specify maximum allowable price swing for each of the products for sale, and maximum allowable swing for the average price of each demand group within the plurality of the demand groups

Kalyan et al. fails to disclose:

- providing a locations template, for prescribing a plurality of store groups for which the optimum prices are to be determined, wherein said prescribing directs said employing to utilize data corresponding to the plurality of said store groups when determining the optimum prices.

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However, Ouimet et al. teaches using data to determine optimal prices for stores in the same market to better optimize their own prices (Col. 10, lines 34-44). Therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the method of Kalyan et al. and include which stores to determine optimal prices as taught by Ouimet et al. Ouimet et al. provides motivation by revealing that knowing prices of other stores in the market can enable a store to better optimize their own prices (Col. 10, lines 34-44).

As per **Claim 29**, Kalyan et al. further discloses a method wherein said utilizing further comprising:

- providing a configured rules template, for prioritizing the rules, wherein, if particular rules conflict, the optimization server optimizes the prices by progressively relaxing constraints prescribed by lower-priority rules
(Col. 19, lines 10-27; Col. 20, lines 1-8).

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Walser et al., U.S. Patent No. 6,731,998 B2
- b. Plumer et al., U.S. Patent No. 6,934,931 B2.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations

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within the individual claim, other passages and figures may apply as well. It is respectfully requested that the applicant, in preparing the responses, fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fadey S. Jabr whose telephone number is (571) 272-1516. The examiner can normally be reached on Mon. - Fri. 7:30am to 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on (571) 272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Fadey S Jabr
Examiner
Art Unit 3639

FSJ

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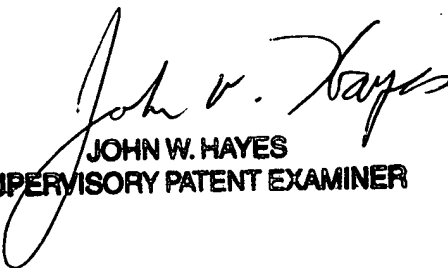
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**JOHN W. HAYES
SUPERVISORY PATENT EXAMINER**